

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 294X)

UNION PACIFIC RAILROAD COMPANY—ANDONMENT EXEMPTION—IN
CANYON COUNTY, IDAHO

Decided: September 30, 2013

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 0.85-mile line of railroad on its Stoddard Industrial Lead from milepost 0.90 to milepost 1.75 in Nampa, in Canyon County, Idaho (the Line). Notice of the exemption was served and published in the Federal Register on August 30, 2013 (78 Fed. Reg. 53,819). The exemption is scheduled to become effective on October 1, 2013.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on September 6, 2013, recommending that two environmental conditions be imposed on any decision granting abandonment authority. In the EA, OEA stated that The U.S. Army Corps of Engineers (Corps) had determined that the South Nampa Lateral, a regulated waterbody under Corps jurisdiction, was located within close proximity to the right-of-way of the proposed abandonment, and that the proposed abandonment might impact this waterbody and contiguous wetlands. The Corps recommended that a permit be obtained if project activities are expected to result in the discharge of fill material below the ordinary high water mark.

According to OEA, UP had not provided any details of its proposed salvage procedure for the Line, and OEA had been unable to determine if the proposed abandonment would result in any discharge of fill material. Therefore, OEA recommended that, prior to commencement of any salvage operations, UP be required to consult with the Corps regarding potential impacts to waters of the United States, including wetlands, and comply with the reasonable requirements of the Corps.

In the EA, OEA also stated that UP served an historic report on the Idaho Historical Society (State Historic Preservation Office or SHPO) pursuant to 49 C.F.R. § 1105.8(c). OEA noted that the SHPO had submitted comments stating that no historic properties listed in or eligible for inclusion in the National Register of Historic Places would be affected within the right-of-way of the proposed abandonment. In addition, the SHPO had requested that it be immediately contacted if any archaeological remains are discovered during UP's salvage activities. Therefore, OEA recommended that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during UP's salvage

activities, UP be required to immediately cease all work and notify OEA and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA would then consult with the SHPO, UP, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

OEA issued its final EA on September 26, 2013, noting that no comments to the EA were received by the September 23, 2013 due date and recommending that the two previously recommended environmental conditions be imposed. Accordingly, the two conditions recommended by OEA in the EA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. On September 4, 2013, the City of Nampa (the City) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with UP for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, the City has also submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on September 18, 2013, UP has indicated its willingness to negotiate with the City for interim trail use and supports the City's request.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board with 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); Nat'l Trails Sys. Act & R.R. Rights-of-Way, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, UP may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

The City also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way. The City asks that UP be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. The City's justification for its request is that these structures have considerable value for recreational trail purposes and that the 180-day period is needed to commence negotiations with UP.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abans.—Use of Rights-of-

Way as Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, requiring UP to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than tracks, ties, and signal equipment), commencing from October 1, 2013, the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on March 30, 2014, while the trail use negotiating period will run 180 days from the service date of this decision and notice, until March 29, 2014. If a trail use agreement is reached for a portion of the right-of-way prior to March 29, 2014, UP must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, UP is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on August 30, 2013, exempting the abandonment of the Line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the City to negotiate with UP for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until March 29, 2014, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the October 1, 2013 effective date of the exemption, until March 30, 2014. The abandonment is also subject to the conditions that UP shall: (1) prior to commencement of any salvage operations, consult with the Corps regarding potential impacts to waters of the United States, including wetlands, and comply with the

reasonable requirements of the Corps; and (2) in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during UP's salvage activities, immediately cease all work and notify OEA and the SHPO pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, UP, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, UP may discontinue service and salvage track and related materials. UP shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days, until March 30, 2014, to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by March 29, 2014, for the right-of-way, interim trail use may be implemented. If no agreement is reached, UP may fully abandon the Line.

9. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.